



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Midwest Asbestos Removal Service, Inc.
File: B-233109
Date: November 10, 1988

DIGEST

1. Contracting agency properly rejected protester's bid as nonresponsive where the corporate surety for the protester's bid bond is not listed in Treasury Department Circular 570 as of bid opening.
2. Protester, second low bidder, is not an interested party to challenge award to low bidder where protester's bid is nonresponsive and protester thus would not be in line for award even if its protest were sustained.

DECISION

Midwest Asbestos Removal Service, Inc., protests the award of a contract to Harrison Contracting, Inc., under invitation for bids (IFB) No. DACA41-88-B-0172, issued by the United States Army Corps of Engineers for an asbestos abatement project at Fort Leavenworth, Kansas. We dismiss the protest because Midwest is not an interested party to maintain the protest.

The IFB required bidders to furnish bid bonds with their bids. The Corps argues that Midwest's bid is nonresponsive because Midwest failed to submit a bond from an acceptable surety. We agree.

Midwest provided a bid bond designating United Coastal Insurance Company as its corporate surety. Under Federal Acquisition Regulation § 28.202-1(a)(1), all corporate sureties offered for bonds furnished with contracts to be performed in the United States must appear on the list contained in Department of Treasury Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring

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Companies." If a bidder's corporate surety does not appear in the circular, the bid is nonresponsive. Siska Construction Co., Inc., B-218428, June 11, 1985, 85-1 CPD ¶ 669. Here, as of bid opening on August 4, 1988, Midwest's corporate surety was not listed in the Treasury Department Circular. See 52 Fed. Reg. 25,052 (1988). As a result, its bid was properly rejected as nonresponsive.

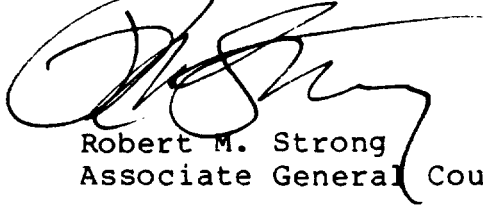
The protester argues that rejection of its bid was improper because there was nothing in the IFB which either stated that the surety was required to be listed in Treasury Circular 570 or incorporated by reference such a requirement. We disagree. Where, as here, the solicitation provides in pertinent part that failure to provide a bid bond in proper form or amount may be a basis for rejection of a bid, the bidders are on notice that not all sureties will be considered adequate and it is incumbent upon them to determine which sureties are acceptable to the government. As a result, the absence of a bidder's corporate surety from Treasury Department Circular 570 operates to render the bid nonresponsive, notwithstanding the fact that the solicitation does not specifically mention the requirement concerning corporate sureties. See Alpha Sigma Investment Corp., B-194629.2, May 17, 1979, 79-1 CPD ¶ 360.

The protester also argues that its proposed corporate surety has provided bonds under other government procurements and the Corps of Engineers orally indicated to Midwest that its bid bond would be accepted. The fact that a contracting agency may have previously overlooked a bid bond deficiency involving United Coastal as a surety does not provide a basis for accepting the same deficiency under the present procurement. Siska Construction Co., Inc., B-218428, supra. Similarly, Midwest's contentions that its bid was not rejected until shortly before contract award to Harrison and that the Corps of Engineers orally indicated that its bid bond would be acceptable do not show that the Corps' ultimate decision to reject the bid as nonresponsive was improper.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 (Supp. IV 1986), and our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1988), a protest may be filed only by an interested party, defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award a contract. Here, since its bid properly was rejected as nonresponsive and there are other bidders eligible for award under the IFB, Midwest is not in line for award even if its protest were sustained. Accordingly, Midwest lacks the requisite direct economic interest and is not an interested

party entitled to maintain the protest. JC Construction Co., B-229486, Dec. 29, 1987, 87-2 CPD ¶ 640.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name and title.

Robert M. Strong
Associate General Counsel